IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
SECOND APPEAL NO.26 OF 2007
Along with
CIVIL APPLICATION NO.30 of 2007

Pandurang Sakharam Patil, .. Appellant.
(Orig.Deft)

Vs

Dadu Bapu Patil,since
deceased through his
legal heirs:
1. Smt. Yamuna Dadu Patil and ors .. Respondents.
(Orig.Plffs)

Mr. P.D.Dalvi, for the appellant.
Mr F.A.Mulla, for Mr S.M.Kamble for respondent no.3.

CORAM : **D.B.BHOSALE,J.**
DATE : 27/02/2007
PC:

1. Heard the learned counsel for the parties.

2. This second appeal is directed against the concurrent judgments of the courts below, by which the respondents-plaintiffs' suit for declaration that they are the owners of the suit land and for injunction, stands decreed partly. Insofar as the injunction is concerned, the courts below have refused to grant injunction holding that the defendant is in possession of the suit land. Since there was no prayer for possession, it appears the decree of possession has not been passed. Mr Dalvi, learned counsel for the appellant, vehemently submitted that the suit itself was not filed within limitation and on that ground alone the

courts below ought to have dismissed the suit. He submitted that, as provided under Article 58 of the Limitation Act, 1963 the suit ought to have been filed within three years from the date of mutation entry no.303, which according to him, was effected some time in 1983-1984. He submitted, it is clearly reflected from the reasons recorded by the courts below that the defendant came in possession of the suit land adversely to the title of the plaintiffs in or about 1983-1984. Mr Dalvi, learned counsel for the appellant, however, could not point out from the record that the mutation entry no.303 was effected in 1983, as contended by him. Even if it is assumed that the entry was effected in 1983-1984 still, in my opinion, limitation would not have started to run from that year. The limitation of three years, as provided under Article 58, starts to run when the right to sue first accrues to the party. The plaintiffs have clearly stated in paragraph 5 of the plaint that their possession was disturbed in June, 2002 and, in view thereof, I find no substance in the first submission of Mr Dalvi. Moreover, the contention regarding limitation was not raised before the courts below and more particularly in the first appeal and hence both the courts did not frame issue of limitation. Keeping that in view, his first submission deserves to be rejected. Insofar as his second

submission that the appellant perfected title by adverse possession is concerned, both the courts and more particularly the appellate court in paragraphs 9,10 and 11 have considered the evidence in proper perspective and have concurrently held that the defendant has failed to prove ownership by adverse possession. I see absolutely no reason to interfere with the concurrent findings recorded by the courts below. I find sufficient material on record to sustain these findings. In the circumstances, the second appeal fails and dismissed as such. As a consequence thereof, the civil application for interim relief stands rejected.

(D.B.BHOSALE,J.)